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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 STEVEN C. SCOTT, No. C 07-0810 WHA (PR)

11 Plaintiff, **ORDER OF SERVICE**

12 v.

13 ROBERT BOWMAN, M.D., and  
MTA GARCIA,

14 Defendants.  
15 \_\_\_\_\_ /

17 Plaintiff, an inmate at Salinas Valley State Prison, has filed a pro se civil rights  
18 complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

19 **DISCUSSION**

20 *A. Standard of Review*

21 Federal courts must engage in a preliminary screening of cases in which prisoners seek  
22 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
23 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
24 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
25 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro  
26 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
27 (9th Cir. 1990).

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1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
2 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)  
3 that the alleged deprivation was committed by a person acting under the color of state law.  
4 *West v. Atkins*, 487 U.S. 42, 48 (1988).

5 **B. Legal Claims**

6 Plaintiff alleges that he has nerve injury which causes him great pain. When he asked  
7 defendant Bowman for stronger pain medication, defendant MTA Garcia told Bowman to deny  
8 it, and Bowman did. This pattern was repeated several times, plus Bowman several times  
9 ignored plaintiff's requests for medical care. On August 10, 2005, Bowman again denied  
10 plaintiff stronger medication, and also denied plaintiff's request for an order that he be allowed  
11 double mattresses. As a result, Bowman and plaintiff got into an argument. Bowman  
12 subsequently discontinued plaintiff's existing pain medication for sixty-five days.

13 Plaintiff's allegations appear sufficient to state a claim against the defendants.

14 **CONCLUSION**

15 1. Plaintiff's motion for "a 180 day extension" does not say what date he wants  
16 extended, and at the moment there are no deadlines pending. The motion (document number 5)  
17 is **DENIED**.

18 2. The clerk shall issue summons and the United States Marshal shall serve, without  
19 prepayment of fees, copies of the complaint in this matter and copies of this order upon the  
20 following defendants: Dr. Robert Bowman and MTA Miss Garcia. Plaintiff states that these  
21 defendants can be found at Salinas Valley State Prison. The clerk shall also serve a copy of this  
22 order on the plaintiff.

23 3. In order to expedite the resolution of this case, the court orders as follows:

24 a. No later than sixty days from the date of service, defendants shall file a  
25 motion for summary judgment or other dispositive motion. The motion shall be supported by  
26 adequate factual documentation and shall conform in all respects to Federal Rule of Civil  
27 Procedure 56, and shall include as exhibits all records and incident reports stemming from the  
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1 events at issue. If defendants are of the opinion that this case cannot be resolved by summary  
2 judgment, they shall so inform the court prior to the date their summary judgment motion is  
3 due. All papers filed with the court shall be promptly served on the plaintiff.

4                 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
5 court and served upon defendants no later than thirty days from the date of service of the  
6 motion. Plaintiff must read the attached pages headed "NOTICE -- WARNING," which are  
7 provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc),  
8 and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).

9                 c. If defendants wish to file a reply brief, they shall do so no later than fifteen  
10 days after the date of service of the opposition.

11                 d. The motion shall be deemed submitted as of the date the reply brief is due.  
12 No hearing will be held on the motion unless the court so orders at a later date.

13                 4. All communications by the plaintiff with the court must be served on defendants, or  
14 defendants' counsel once counsel has been designated, by mailing a true copy of the document  
15 to defendants or defendants' counsel.

16                 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
17 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the  
18 parties may conduct discovery.

19                 6. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
20 informed of any change of address and must comply with the court's orders in a timely fashion.  
21 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
22 Federal Rule of Civil Procedure 41(b).

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24 **IT IS SO ORDERED.**

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26 Dated: June 28, 2007.

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*Wm Aho*  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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28**NOTICE -- WARNING  
(SUMMARY JUDGMENT)**

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

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**NOTICE -- WARNING**  
**(EXHAUSTION)**

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.